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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,173	03/06/2001	Peter V. Radatti	79-00	3615

7590 01/04/2005  
CyberSoft, Inc.  
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EXAMINER

YIGDALL, MICHAEL J

ART UNIT	PAPER NUMBER
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2122

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/800,173

Applicant(s)

RADATTI, PETER V.

Examiner

Michael J. Yigdal

Art Unit

2122

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4 and 8-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4 and 8-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 20, 2004 has been entered. Claims 4 and 8-21 are pending.

### ***Response to Arguments***

2. Applicant's arguments have been fully considered but they are not persuasive.
3. Although Applicant suggests that the examiner agreed with Applicant in noting that there is no hash sent from a server to a client in the Pedrizetti reference (Applicant's remarks, page 5), it should be noted that the examiner did not indicate such agreement.
4. Similarly, Applicant's arguments are based on the contention that Pedrizetti does not transmit a hash (Applicant's remarks, pages 5-8).

However, as Applicant acknowledges, Pedrizetti discloses a bit field on the server that is compressed and transferred to the client (column 4, lines 51-58). Pedrizetti further states, at line 58, that the field, i.e. the bit field that is transferred to the client, is a hash table. Therefore, it is apparent that Pedrizetti does indeed transfer a hash to the client.

Furthermore, Applicant characterizes column 1, lines 45-49 of Pedrizetti as a description of "how a hash function is first used at the server to construct a bitmap table, which table is then transmitted to the client" (Applicant's remarks, page 6). In other words, Pedrizetti discloses that

Art Unit: 2122

a table generated by a hash function is transmitted from the server to the client. Such a table, generated by a hash function, is a hash table per se. Moreover, any value generated by a hash function can be considered a hash.

It should also be noted that the claims merely call for "a hash." Applicant has not indicated any features of the hash in the present invention that may serve to distinguish over what is taught by Pedrizetti.

5. Applicant notes that Aviani nowhere teaches, suggests not discloses the limitations of independent claim 8 and therefore cannot serve as an anticipatory reference for dependent claims 16 and 17.

However, again, claims 16 and 17 are product-by-process claims for which patentability is determined based on the product itself and not on the method of production. See MPEP § 2113. In this case, patentability is determined based on the products recited in claims 16 and 17 ("data information" and "a hash," respectively) and not on the method of production recited in claim 8. Aviani discloses data information (column 6, lines 1-5) and a hash (column 6, lines 17-19), and thus anticipates claims 16 and 17.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

Art Unit: 2122

international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 4 and 8-21 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pat. No. 6,151,708 to Pedrizetti et al. (art of record, "Pedrizetti" herein).

With respect to claim 4 (original), Pedrizetti discloses an apparatus for transmitting data to a target (see, for example, the abstract) comprising:

(a) a means for updating, present on a distribution media, and further comprising data, data information and a hash of said data information (see, for example, FIG. 1 and column 1, lines 41-65, which shows a system for updating software from a distribution server, comprising update data, information based on the update, and a hash table based on the information);

(b) a means for transmission between said distribution media and said target (see, for example, pathway 104 in FIG. 1 and column 2, lines 57-61, which shows a means for transmission between the server and client);

(c) a means for obtaining data information from said distribution media (see, for example, column 1, lines 52-56, which shows that update data information is obtained by the client from the distribution server); and

(d) a means for processing said hash of said data information (see, for example, FIG. 5 and associated text, and column 1, lines 48-59, which shows that the client processes the information to determine the availability of updates);

whereby said means for obtaining data information from said distribution media obtains said hash from said means for updating present on said distribution media, which hash is transmitted through said means for transmission to said means for processing, and which upon

Art Unit: 2122

receipt of said hash of said data information compares said hash with said target in order to determine if said data should be transmitted to said target (see, for example, column 1, lines 48-59, which shows that the hash table and the update data information is transferred to the client for processing and is compared with the client to determine whether or not the actual update data should be transferred as well).

With respect to claim 8 (original), Pedrizetti discloses a method for transmitting data to a target (see, for example, the abstract) comprising the steps of:

(a) transmitting a hash of data information from a first distribution media to said target (see, for example, column 1, lines 45-49, which shows that a hash table based on the update data information is transferred to the client from the distribution server);

(b) comparing said hash in order to determine if data information should be transmitted to said target (see, for example, column 1, lines 49-56, which shows that the hash table is compared with the client to determine whether or not additional information should be transferred as well);

(c) transmitting said data information from a second distribution media, if necessary, to said target (see, for example, column 1, lines 52-56, which shows that update data information is transferred to the client if needed; also see, for example, column 6, lines 14-17, which shows that a third-party server, i.e. a second distribution media, may be used);

(d) comparing said data information with said target in order to determine if said data should be transmitted to said target (see, for example, column 1, lines 52-59, which shows that the update data information is compared with the client to determine whether or not the actual update data should be transferred as well).

With respect to claim 9 (previously presented), Pedrizetti also discloses the step of obtaining data information from said second distribution media (see, for example, column 1, lines 52-56, which shows that update data information is obtained by the client from the distribution server).

With respect to claim 10 (original), Pedrizetti also discloses the limitation wherein the step of obtaining data information from said server further comprises the step of using an http address to obtain data information (see, for example, column 2, lines 61-65, which shows that an Internet connection may be used in conjunction with a Web browser for the software update system; also see, for example, FIG. 6A, which shows a Web browser using an HTTP address).

With respect to claim 11 (original), Pedrizetti also discloses the limitation wherein the first and second distribution media are the same (see, for example, server 100 in FIG. 1, which shows the software update system using a single server).

With respect to claim 12 (original), Pedrizetti also discloses the limitation wherein either the first and second distribution media at least partially comprises a network (see, for example, column 2, lines 57-58, which shows a server in communication with a client over a communications pathway, i.e. in a network).

With respect to claim 13 (original), Pedrizetti also discloses the step of preparing said data information from attributes of said data (see, for example, column 5, lines 50-60, which shows an index file having update data information based on attributes of the actual update data,

Art Unit: 2122

such as version number and package name; note that the step of preparing the index file is inherent to the system).

With respect to claim 14 (original), Pedrizetti also discloses the limitation wherein said data comprises one or more software product data files (see, for example, column 1, lines 41-45, which shows that software program updates are transferred from the distribution server to the client).

With respect to claim 15 (original), Pedrizetti also discloses the step of preparing said hash from said data information (see, for example, column 1, lines 45-48, which shows a hash table prepared from the update data information).

With respect to claim 16 (original), Pedrizetti also discloses data information prepared by the method of claim 13 (see, for example, column 5, lines 50-60, which shows an index file having update data information based on attributes of the actual update data).

With respect to claim 17 (original), Pedrizetti also discloses a hash prepared by the method of claim 15 (see, for example, column 1, lines 45-48, which shows a hash table prepared from the update data information).

With respect to claim 18 (original), Pedrizetti also discloses the step of transmitting said data from a third distribution media to said target (see, for example, column 1, lines 56-59, which shows that update data is transferred to the client from the distribution server; also see, for example, column 6, lines 14-17, which shows that a third-party server, i.e. a third distribution media, may be used).



With respect to claim 19 (original), Pedrizetti also discloses the limitation wherein the third distribution media at least partially comprises a network (see, for example, column 2, lines 57-58, which shows a server in communication with a client over a communications pathway, i.e. in a network).

With respect to claim 20 (original), Pedrizetti also discloses the step of editing data on said target in order to update data on said target (see, for example, column 3, lines 29-41, which shows that data on the client is edited and updated).

With respect to claim 21 (original), Pedrizetti discloses a method for transmitting data to a target (see, for example, the abstract) comprising the steps of:

(a) providing a software product (see, for example, column 1, lines 41-45, which shows that software program updates are provided on a server);

(b) preparing data information about said software product (see, for example, column 5, lines 50-60, which shows an index file having information based on the software update; note that the step of preparing the index file is inherent to the system);

(c) preparing a hash of data information about said software product (see, for example, column 1, lines 45-48, which shows a hash table prepared from the update data information);

(d) storing said software product on a first distribution media (see, for example, update data 114 in FIG. 1, which shows the software program update data stored on a server);

(e) storing said data information on a second distribution media (see, for example, column 6, lines 14-17, which shows that a third-party server, i.e. a second distribution media, may be used for storage);

Art Unit: 2122

(f) storing said hash of data information on a third distribution media (see, for example, column 6, lines 14-17, which shows that a third-party server, i.e. a third distribution media, may be used for storage);

(g) obtaining data information about said software product (see, for example, column 1, lines 52-56, which shows that information about the software updates is obtained by the client);

(h) transmitting said hash of data information to said target (see, for example, column 1, lines 45-49, which shows that a hash table based on the update data information is transferred to the client);

(i) comparing said hash in order to determine if data information should be transmitted to said target (see, for example, column 1, lines 49-56, which shows that the hash table is compared with the client to determine whether or not additional information should be transferred as well);

(j) transmitting said data information, if necessary, to said target (see, for example, column 1, lines 52-56, which shows that update data information is transferred to the client if needed);

(k) comparing said data information with said target in order to determine if said data should be transmitted to said target (see, for example, column 1, lines 52-59, which shows that the update data information is compared with the client to determine whether or not the actual update data should be transferred as well);

(l) transmitting said data, if necessary, to said target (see, for example, column 1, lines 56-59, which shows that update data is transferred to the client if needed); and

(m) editing said data on said target in order to update data on said target (see, for example, column 3, lines 29-41, which shows that data on the client is edited and updated).

8. Claims 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,950,205 to Aviani (art of record, "Aviani" herein).

These claims are statutory only because they depend (indirectly) from claim 8, which is statutory. If these claims were to be considered independent claims, they would be non-statutory under 35 U.S.C. 101 as claiming data per se. Furthermore, claims 16 and 17 are product-by-process claims for which patentability is determined based on the product itself and not on the method of production. See MPEP § 2113.

With respect to claim 16 (original), Aviani discloses data information (see, for example, column 6, lines 1-5, which shows information based on the properties of a file, i.e. data information).

With respect to claim 17 (original), Aviani discloses a hash (see, for example, column 6, lines 17-19).

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Yigdall whose telephone number is (571) 272-3707. The examiner can normally be reached on Monday through Friday from 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

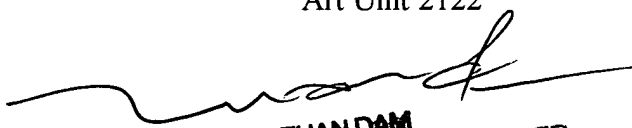
Art Unit: 2122

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MY

Michael J. Yigdall  
Examiner  
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**TUAN DAM**  
**SUPERVISORY PATENT EXAMINER**